

Restriction Of Land For Conservation

By Donald Connors

Clipper
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(Attorney Connors, former chairman of the Duxbury Friends of Conservation, is an active conservationist. -- Ed.)

Conservation

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Since 1969 when the Massachusetts Conservation Restriction Act became law, the Duxbury Conservation Commission and the Duxbury Rural and Historic Society, Inc. have acquired important conservation restrictions within Duxbury. Recently, a number of land owners have inquired about gifts or sale of conservation restrictions to the town or charitable organization. Such restrictions may be acquired by a governmental body like the Conservation Commission or charitable organizations such as the Duxbury Rural and Historic Society, Inc., The Audubon Society or the North and South River Watershed Association.

A conservation restriction, simply stated, is a legally enforceable agreement between an owner of real property and a governmental body or charitable organization by which the owner promises to keep his land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming or forest use. Put another way, a conservation restriction is an agreement by which a property owner agrees to keep his land or water area in a predominantly natural condition. A conservation restriction runs with the land, and is therefore binding upon any subsequent owner of the real estate. If properly recorded in the "restriction tract index" in the Registry of Deeds, the restriction is valid and enforceable in perpetuity unless the owner limits its term as part of the restriction. A conservation restriction may be cancelled by its holder (i.e., the town, charitable organization) if it is no longer required, subject, however, to detailed safeguards.

The sale or gift of a conservation restriction to a governmental body or charitable organization does not give the public any rights to enter upon the restricted land unless the restriction so provides. Thus, the owner may remain on his property and use it in any manner he wishes, provided his land is kept in its natural state consistent with

the terms of the restriction.

Conservation restrictions may be sold or they may be the subject of a gift.

There are several different types of tax advantages available to the real estate owner who sells or gives a conservation restriction. The following examples, drawn from a pamphlet published by the Massachusetts Department of Natural Resources, are illustrative:

(a) REAL ESTATE TAX: Mr. Land Poor has owned a 100 acre parcel of land for many years. Until recently, the taxes on the land have been no higher than \$300 per year. However, recently the Town reassessed all of its real estate at "Fair market value" and Mr. Poor now pays \$1,500 per year to the Town. The Conservation Commission talks to Mr. Poor about the Conservation Restriction Act and Mr. Poor grants a restriction to the Town. He then properly requests the assessors to revalue his property to reflect the restriction, and his real estate taxes return to \$300. The assessors may not assess the land as though it could be developed. Under a 1972 statute, town assessors must assess each parcel of permanently restricted land separate from other real estate the land owner may hold.

(b) ESTATE (DEATH) TAX: Shortly after executing the conservation restriction, Mr. Poor passes away. The Internal Revenue Service then proceeds to inventory Mr. Poor's property for estate tax purposes. The fact is that Mr. Poor has little else of value besides the 100 acre parcel of land. Had he not agreed to the restriction, the I.R.S. would have put a value of \$150,000 on the land and Mr. Poor's estate would have had to pay an estate tax of \$18,000 to the federal government. However, the I.R.S. recognizes conservation restrictions of this type and places a value of \$55,000 on the real estate parcel. No estate tax is due, since the first \$60,000 in any estate is not taxed. Thus, Mr. Poor's heirs can continue to use the land which they would otherwise have been forced to sell in order to raise money for the estate tax.

(c) INCOME TAX: Mr. Green owns a large estate in another part of town. He would like to give some of his land to the Town but Mrs. Green likes her privacy and doesn't wish to share it with the public. Mr. Green, therefore, decides to execute a conservation restriction to the Conservation Commission. An expert real estate appraiser values the restriction at \$90,000. Mr. Green is now entitled to a charitable deduction of up to \$18,000 per year for the next five years on his income tax. In addition, Mr. Green may receive the same benefits as to real property and estate taxes as are applicable to Mr. Poor in illustrations (a) and (b).

There is no standard form of conservation restriction. Each restriction is tailored to fit the particular situation and the desires and needs of the land owner. The Blue Fish River Restriction was specially tailored in this fashion.

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collaboration with his daughter, Mrs. Ellen Bradford Stebbins, published in the Old Colony Memorial in June, 1895, an outstanding article on Duxbury shipbuilding, which has been extensively quoted ever since. In 1850 the "Hope," 881 tons, was the largest merchant ship in New England. It is planned to have the picture of this ship made into a seal for the use of letters during the Duxbury Tercentenary of 1937.

WESTON INDUSTRIES

Captain Bradford's description of the Weston industries cannot be improved upon and is here quoted. "This particular ropewalk was part of a system of industries carried on by the Westons, without a somewhat extended notice of which no account of Duxbury shipbuilding could be regarded as adequate. Ezra Weston, the second of the name and inheriting from his father the popular title of "King Caesar" was for the years 1820 to 1842 probably the most widely known citizen of Duxbury, and was considered the largest ship owner in the United States; Daniel Webster so rated him in his great speech at Saratoga during the Harrison campaign of 1840. His ships were then to be seen in all parts of the world; he not only built his own vessels, but he controlled nearly all the branches of business connected with shipbuilding and the ownership of vessels; he had his own ropewalk, spar yard, blacksmith shop and sail loft; brought his timber and lumber from Haverhill and Bangor in his own schooners or from Bridgewater and Middleboro with his own ox or horse teams, and his supplies from Boston in his own packets; his salt came from Cadiz, St. Ubes and Turk's Island in his own brigs; he sent his schooners to the Grand Banks for fish in the summer time and "out south" in the winter for corn. He owned a large track of land on Powder Point, and here on the south side, where Bluefish River widens into the bay, with the outlook towards Captain's Hill and Plymouth stood his dwelling house; here still remains 'Weston's wharf' where his new vessels fitted out and where his packets loaded and unloaded, but spar yard and sail loft, blacksmith shop and ropewalk have all disappeared."

In a memorial to his father, G. B. Weston and his mother, Deborah B. Weston, privately printed (1916) Mr. E. B. Weston states:

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There are several different types of tax advantages available to the real estate owner who sells or gives a conservation restriction. The following examples, drawn from a pamphlet published by the Massachusetts Department of Natural Resources, are illustrative:

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(b) ESTATE (DEATH) TAX: Shortly after executing the conservation restriction, Mr. Poor passes away. The Internal Revenue Service then proceeds to inventory Mr. Poor's property for estate tax purposes. The fact is that Mr. Poor has little else of value besides the 100 acre parcel of land. Had he not agreed to the restriction, the I.R.S. would have put a value of \$150,000 on the land and Mr. Poor's estate would have had to pay an estate tax of \$18,000 to the federal government. However, the I.R.S. recognizes conservation restrictions of this type and places a value of \$55,000 on the real estate parcel. No estate tax is due, since the first \$60,000 in any estate is not taxed. Thus, Mr. Poor's heirs can continue to use the land which they would otherwise have been forced to sell in order to raise money for the estate tax.

E. Weston and Son, 1798-1822, 24 years; Ezra I and Ezra II, Ezra Weston, 1822-1842, 20 years; Ezra II.

E. Weston and Sons, 1842-1857, 15 years; Ezra II.

Several months in 1842; Gershom, Alden and Ezra IV, 1842-1852, 10 years

Gershom and Alden, 1852-1857, 5 years.

The four Weston firms owned and built from 1800 to 1846, inclusive, 97 vessels; namely, 21 ships ranging from 246 to 881 tons, 1 bark 209 tons, 30 brigs from 120 to 240 tons, 35 schooners ranging from 20 to 120 tons and 10 sloops ranging from 50

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Land owners interested in obtaining further information about conservation restrictions should contact the Duxbury Conservation Commission or the Lands Committee of the Duxbury Rural and Historic Society, Inc.

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"There were four Weston firms as follows:

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